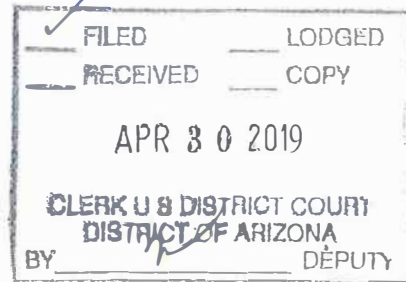


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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE DISTRICT OF ARIZONA

10  
11 In re Request for Assistance from the  
12 Government of the Kingdom of Belgium  
13 Relating to the Investigation of the Murder  
14 of S.V.H.

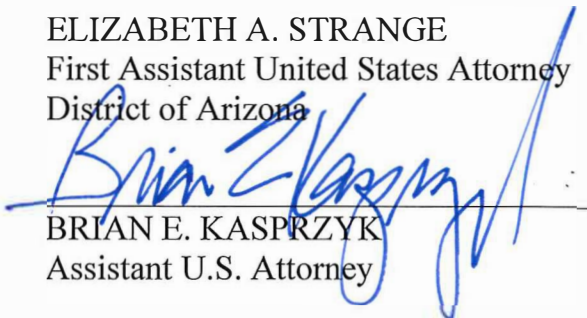
No. MC-19-00011-PHX-GMS

15 **APPLICATION FOR ORDER**  
16 **PURSUANT TO TITLE 18, UNITED**  
17 **STATES CODE, SECTION 3512**

18 The United States of America, moving by and through its undersigned counsel,  
19 respectfully submits this ex parte application for an Order, pursuant to 18 U.S.C. § 3512,  
20 appointing the undersigned attorney, Brian E. Kasprzyk, Assistant U.S. Attorney, Office  
21 of the United States Attorney (or a substitute or successor subsequently designated by the  
22 Office of the United States Attorney), as a commissioner to collect evidence from witnesses  
23 and to take such other action as is necessary to execute a request for assistance in a criminal  
24 matter from the Government of the Kingdom of Belgium (Belgium).

25 Respectfully submitted this 30th day of April, 2019.

26 ELIZABETH A. STRANGE  
27 First Assistant United States Attorney  
28 District of Arizona

  
BRIAN E. KASPRZYK  
Assistant U.S. Attorney

1                                   **I. MEMORANDUM OF POINTS AND AUTHORITIES**

2

3                   **A. RELEVANT FACTS**

4           On March 23, 2018, the Ministry of Justice for Belgium submitted a request for  
5 assistance (hereinafter, the Request) to the United States, pursuant to the Instrument as  
6 contemplated by Article 3(2) of the Agreement on Mutual Legal Assistance Between the  
7 United States of America and the European Union signed 25 June 2003, as to the  
8 application of the Treaty Between the United States of America and the Kingdom of  
9 Belgium on Mutual Legal Assistance in Criminal Matters signed 28 January 1988, U.S.-  
10 Belg., Dec. 16, 2004, S. TREATY DOC. NO. 109-13 (2006) (hereinafter, the "Treaty").  
11 As stated in the Request, the Examining Magistrate of Antwerp is investigating a crime,  
12 specifically, homicide, which occurred in August 1996, in violation of the criminal law of  
13 Belgium, namely, Article 394 of the Criminal Code of Belgium. A copy of the applicable  
14 law is included as Attachment A to this application. Under the Treaty, the United States is  
15 obligated to render assistance in response to the Request.

16           According to authorities in Belgium, a woman, S.V.H. was murdered in the early  
17 morning hours of August 10, 1996. Her body was found partially clothed with obvious  
18 injuries to her head, face and genitals in the reeds along the Scheldt River in Antwerp.  
19 Witnesses authorities believe were among the last people to see the victim alive reported  
20 seeing the victim getting into a large blue American made car with a man later identified  
21 as Claude Pierret (Pierret).

22           Further investigation revealed that Pierret was friends with a man named Helmut  
23 Bergunde (Bergunde). At the time of the homicide, Bergunde lived nearby in The  
24 Netherlands and owned a large light blue Cadillac with Arizona license plate number NMR  
25 292. Witnesses confirmed that Bergunde would allow Pierret to drive his light blue  
26 Cadillac from time to time. In 1999, Belgian and Dutch authorities executed a search at  
27 Bergunde's residence. Bergunde's Cadillac was one of two American made vehicles found  
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1 on the premises and forensic samples were taken. Investigators were unable to find any  
2 evidence from the vehicle linking it to Pierret or the victim. Belgian authorities continued  
3 with their investigation until December 2005 when it was closed without filing charges.

4 The investigation was re-opened in September 2017 when new information came to  
5 light after a journalist began investigating the case at the behest of the victim's mother.  
6 Photographs of the light blue Cadillac and Pierret were shown to the original two witnesses  
7 who up to this point had not seen the photographs for some unknown reason. The witnesses  
8 identified the Cadillac as the car they saw the victim entering and Pierret as the man driving  
9 shortly before the victim's body was discovered.

10 To further the investigation, authorities in Belgium have asked U.S. authorities to  
11 arrange for an interview of Bergunde to ask additional questions regarding not only the  
12 Cadillac but also his friendship with Pierret.

### 13 **B. LEGAL AUTHORITY**

14 A treaty constitutes the law of the land. U.S. Const. art. VI, cl.2. The provisions of  
15 a treaty have equal footing with acts of Congress and are binding on the courts. *See*  
16 *Asakura v. City of Seattle*, 265 U.S. 332, 341 (1924); *United States v. The Peggy*, 5 U.S.  
17 103 (1801); *United States v. Emuegbunam*, 268 F.3d 377, 389 (6th Cir. 2001). The  
18 provisions of a treaty should be construed liberally "to give effect to the purpose which  
19 animates it." *United States v. Stuart*, 489 U.S. 353, 368 (1989) (internal quotation marks  
20 omitted). To the extent that the provisions of a treaty are inconsistent with a preexisting  
21 statutory provision, the treaty supersedes the statute. *Zschernig v. Miller*, 389 U.S. 429,  
22 440-41 (1968).

23 The United States and Belgium entered into the Treaty to promote more effective  
24 cooperation and assistance between the parties in criminal matters. *Treaty Between the*  
25 *United States of America and the Kingdom of Belgium on Mutual Legal Assistance in*  
26 *Criminal Matters* signed 28 January 1988, U.S.-Belg., Dec. 16, 2004, S. TREATY DOC.  
27 NO. 109-13 (2006) (hereinafter, the "Treaty"). The Treaty obligates each party, upon  
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1 request, to provide assistance to the other in criminal investigations, prosecutions, and  
2 related proceedings, including assistance in serving documents, obtaining testimony,  
3 statements, and records, and executing searches and seizures. *Id.* In addition, the Treaty,  
4 like 18 U.S.C. § 3512, authorizes federal courts to use compulsory measures to further the  
5 execution of such requests. *Id.* at 28-29. Finally, the Treaty requires each party, upon  
6 request, to use its best efforts to keep a request and its contents confidential. *Id.* at 31.

7 When executing a treaty or non-treaty request for assistance from a foreign authority, an  
8 attorney for the government may file an application to obtain any requisite court orders  
9 under 18 U.S.C. § 3512. This section authorizes a federal court to issue such orders and  
10 provides in pertinent part:

11       Upon application, duly authorized by an appropriate official of the  
12       Department of Justice, of an Attorney for the Government, a Federal judge  
13       may issue such orders as may be necessary to execute a request from a  
14       foreign authority for assistance in the investigation or prosecution of criminal  
15       offenses, or in proceedings related to the prosecution of criminal offenses,  
16       including proceedings regarding forfeiture, sentencing, and restitution.

17       [A]n application for execution of a request from a foreign authority under  
18       this section may be filed . . . in the district in which a person who may be  
19       required to appear resides or is located or in which the documents or things  
20       to be produced are located.

21       The term “foreign authority” means a foreign judicial authority, a foreign  
22       authority responsible for the investigation or prosecution of criminal offenses  
23       or for proceedings related to the prosecution of criminal offenses, or an  
24       authority designated as a competent authority or central authority for the  
25       purpose of making requests for assistance pursuant to an agreement or treaty  
26       with the United States regarding assistance in criminal matters.

27       18 U.S.C. § 3512(a)(1), (c)(3), (h)(2).

28       Congress enacted this section to make it “easier for the United States to respond to  
[foreign] requests by allowing them to be centralized and by putting the process for  
handling them within a clear statutory scheme.” 155 Cong. Rec. 6,810 (2009) (statement

of Sen. Whitehouse); Foreign Evidence Request Efficiency Act of 2009, Pub. L. No. 111-79, 123 Stat. 2086.<sup>1</sup> This section provides clear authority for the federal courts, upon application duly authorized by an appropriate official of the Department of Justice, to issue orders which are necessary to execute a foreign request.

An application is duly authorized by an appropriate official of the Department of Justice when the Office of International Affairs, which serves as the “Central Authority” for the United States, has reviewed and authorized the request, and executes the request itself or delegates execution to another attorney for the government.<sup>2</sup> Upon such a duly authorized application, Section 3512 authorizes a federal judge<sup>3</sup> to issue “such orders as may be necessary to execute [the] request,” including: (1) search warrants under Fed. R. Crim. P. 41; (2) orders for electronic records under 18 U.S.C. § 2703; (3) orders for pen registers or trap and trace devices under 18 U.S.C. § 3123; and (4) orders appointing a person to direct the taking of testimony or statements and/or the production of documents or other things. *See* 18 U.S.C. § 3512(a)(1)-(b)(1). In addition, a federal judge may prescribe any necessary procedures to facilitate the execution of the request, including any

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<sup>1</sup> Prior to the enactment of 18 U.S.C. § 3512, the United States routinely utilized the procedures authorized by 28 U.S.C. § 1782 (the “commissioner” process) to execute requests from foreign authorities. *See In re Request from the United Kingdom*, 685 F.3d 1, 11 (1st Cir. 2012) (18 U.S.C. § 3512 provides a more streamlined process than 28 U.S.C. § 1782, the statute under which foreign requests were previously executed); *see also Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 247-49 (2004) (describing history of Section 1782). When enacting Section 3512, Congress anticipated that improved U.S. handling of foreign requests would ensure reciprocity in response to U.S. requests for assistance in its criminal investigations. *See, e.g.*, 155 Cong. Rec. 10,093 (2009) (statement of Rep. Schiff).

<sup>2</sup> The Attorney General, through regulations and Department of Justice directives, delegated to the Office of International Affairs the authority to serve as the “Central Authority” under treaties and executive agreements between the United States and other countries pertaining to mutual assistance in criminal matters. *See* 28 C.F.R. 0.64-1, 0.64-4, and Appendix to Subpart K, Directive Nos. 81A and 81B.

<sup>3</sup> The term “federal judge” includes a magistrate judge. *See* 18 U.S.C. § 3512(h)(1) and Fed. R. Crim. P. 1(b)(3)(B) (including a magistrate judge in the definition of federal judge).

1 procedures requested by the foreign authority to facilitate its use of the evidence. *See In*  
2 *re Letter of Request from the Crown Prosecution Service of the United Kingdom*, 870 F.2d  
3 686, 693 (D.C. Cir. 1989) (court has discretion in prescribing procedures to be followed in  
4 executing foreign request under 28 U.S.C. § 1782); *cf. White v. National Football League*,  
5 41 F.3d 402, 409 (8th Cir. 1994) (court may issue process necessary to facilitate disposition  
6 of matter before it); Fed. R. Crim. P. 57(b).

7 Section 3512 also authorizes any person appointed to direct the taking of testimony  
8 or statements and/or the production of documents or other things to: (1) issue an order  
9 requiring a person to appear and/or produce documents or other things; (2) administer any  
10 necessary oaths; (3) take testimony or statements; and (4) take receipt of documents or  
11 other things. 18 U.S.C. § 3512(b)(2). In ordering a person to appear and/or produce  
12 documents or other things, the person appointed, commonly referred to as the  
13 “commissioner,” typically uses a subpoena entitled “Commissioner Subpoena.” Any such  
14 subpoena or any other order, subject to subsection (d), may be served or executed anywhere  
15 in the United States. *See* 18 U.S.C. § 3512(f). A copy of a “Commissioner Subpoena” is  
16 included as Attachment B.

## 17 II. CONCLUSION

18  
19 The instant Request is exactly the type of request contemplated for execution under  
20 Section 3512. In its sequential legislative efforts relevant to the provision of assistance to  
21 foreign authorities, Congress has intended that the United States set an example to other  
22 nations by making judicial assistance generously available. *See, e.g., In re Request for*  
23 *Assistance from Ministry of Legal Affairs of Trinidad and Tobago*, 848 F.2d 1151, 1153-  
24 54 (11th Cir. 1988), cert. denied, 488 U.S. 1005 (1989). Section 3512 enables the United  
25 States to respond “more quickly . . . to foreign evidence requests. These efforts will assist  
26 the United States with its investigations as foreign authorities will be urged to respond in  
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1 kind to our evidence requests in a speedy manner.” 155 Cong. Rec. H10,093 (2009)  
2 (Statement of Rep. Schiff).

3 As to this Request, both the investigatory nature of the Request as described and the  
4 intentions of the foreign authority under the Treaty support the application and order be  
5 maintained under seal.

6 Accordingly, to execute this Request, the Government moves this Court to issue the  
7 attached Order pursuant to the Treaty and 18 U.S.C. § 3512 appointing the undersigned  
8 Assistant U.S. Attorney as Commissioner, authorizing the undersigned to take the actions  
9 necessary, including the issuance of Commissioner’s Subpoenas, to obtain the evidence  
10 requested, to adopt such procedures in receipt of the evidence as are consistent with the  
11 intended use thereof, and sealing the application and order until further order of this Court.

12 Respectfully submitted this 30th day of April, 2019.

13 ELIZABETH A. STRANGE  
14 First Assistant United States Attorney  
15 District of Arizona

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17 BRIAN E. KASPRZYK  
18 Assistant U. S. Attorney  
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**ATTACHMENT A**



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2                   Relevant Provision(s) of the Belgian Criminal Code

3       Article 394 of the Belgian Penal Code provides, in pertinent part:

4       A premeditated manslaughter is called murder, which is punishable by lifelong  
5       imprisonment.

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**ATTACHMENT B**

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BRIAN E. KASPRZYK  
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Attorneys for Plaintiff  
7

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE DISTRICT OF ARIZONA

10 In re Request for Assistance from the  
11 Government of the Kingdom of Belgium  
12 Relating to the Investigation of the Murder  
of S.V.H.  
13

No.

**COMMISSIONER'S SUBPOENA**

14  
15 TO: \_\_\_\_\_  
16

17 I, Commissioner Brian E. Kasprzyk, Assistant U.S. Attorney, Office of the United  
18 States Attorney, acting pursuant to 18 U.S.C. §3512, and this Court's Order thereunder  
19 dated \_\_\_\_\_, for the purpose of rendering assistance to Belgium, command  
20 that you appear before me in Room \_\_\_\_, in the building located at 40 North Central Ave.  
21 in the city of Phoenix, in the state of Arizona, on \_\_\_\_\_, 2019, at \_\_\_\_ a.m./p.m.  
22 to provide testimony regarding an alleged violation of: the laws of Belgium, namely,  
23 murder, in violation of Article 394 of the Belgian Penal Code, and, that at the place and  
24 time aforesaid, you provide the following: \_\_\_\_\_.

25 Pursuant to the Court's Order dated \_\_\_\_\_, 20\_\_, no notice of this  
26 subpoena or its contents is to be given to any person unless otherwise authorized to do so  
27 by the Court, except that \_\_\_\_\_ may notify an attorney for \_\_\_\_\_ of  
28 the subpoena and its contents for the purpose of obtaining legal advice.

1  
2 For failure to attend and provide testimony and/or said records, or for disclosure of  
3 the existence of the subpoena, you may be deemed guilty of contempt and liable to penalties  
4 under the law.

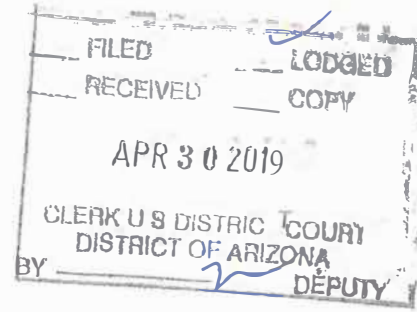
5  
6 Respectfully submitted this 30th day of April, 2019.

7 ELIZABETH A. STRANGE  
8 First Assistant United States Attorney  
9 District of Arizona

10 \_\_\_\_\_  
11 BRIAN E. KASPRZYK  
12 Assistant U. S. Attorney

13 Service Certification:

14 I, Brian E. Kasprzyk, Assistant United States Attorney, hereby certify that on  
15 \_\_\_\_\_, 2019, I served \_\_\_\_\_ with the  
16 attached Commissioner's Subpoena by causing it to be mailed to \_\_\_\_\_.



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

In re Request for Assistance from the  
Government of the Kingdom of Belgium  
Relating to the Investigation of the Murder  
of S.V.H.

No. MC-19-00011-PHX-GMS

**ORDER**

Upon application of the United States seeking an order, pursuant to 18 U.S.C. §3512, appointing Brian E. Kasprzyk, Assistant U.S. Attorney, Office of the United States Attorney (or a substitute or successor subsequently designated by the Office of United States Attorney), as a commissioner to execute the above-captioned request from the Government of the Kingdom of Belgium (the "Request") by collecting evidence for use in a criminal investigation, prosecution, or proceeding in Belgium, and the Court having fully considered this matter,

**IT IS HEREBY ORDERED**, pursuant to the authority conferred by 18 U.S.C. §3512, that Brian E. Kasprzyk (or a substitute or successor designated by the Office of the United States Attorney) is appointed as a commissioner of this Court (the commissioner) and hereby directed to execute the Request and to take such steps as are necessary to collect the evidence requested. In doing so, the commissioner:

1. may issue commissioner subpoenas to be served at any place within the United States on persons (natural and legal) ordering them or their representatives to appear and to testify and/or produce evidence located within the United States;

2. shall adopt procedures to collect the evidence requested consistent with its

1 use in the investigation, prosecution, or proceeding in Belgium for which the Ministry of  
2 Justice Belgium has requested assistance, which may be specified in the Request or  
3 provided by, or with the approval of, the Ministry of Justice Belgium;

4 3. may, in collecting the evidence requested, be accompanied by persons whose  
5 presence or participation is authorized by the commissioner, including, without limitation,  
6 special agents of the Federal Bureau of Investigations and/or representatives of Belgium  
7 who, as authorized or directed by the commissioner, may direct questions to any witness;

8 4. may seek such further orders of this Court as may be necessary to execute  
9 this Request, including orders to show cause why persons served with commissioner  
10 subpoenas who fail to appear and/or produce evidence should not be held in contempt, and  
11 protective orders to regulate the use of the evidence collected;

12 5. may order the subpoenaed parties not to notify any person, including but not  
13 limited to the subject of the investigation and/or members of his family, of the existence of  
14 the commissioner subpoena or its contents, except that the subpoenaed parties may notify  
15 their own attorneys, if applicable, of the subpoena and its contents for the purpose of  
16 receiving legal advice; and

17 6. shall certify and transmit the evidence collected to the Office of International  
18 Affairs, which will transmit it to Belgium.

19 DATED this \_\_\_\_\_ day of \_\_\_\_\_.

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22 U.S. DISTRICT COURT JUDGE  
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